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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of Part 97 of the
Commission's Rules Concerning
Message Forwarding Systems in
The Amateur Radio Service

PR Docket No. 93-85

To: The Commission

COMMENTS OF
THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

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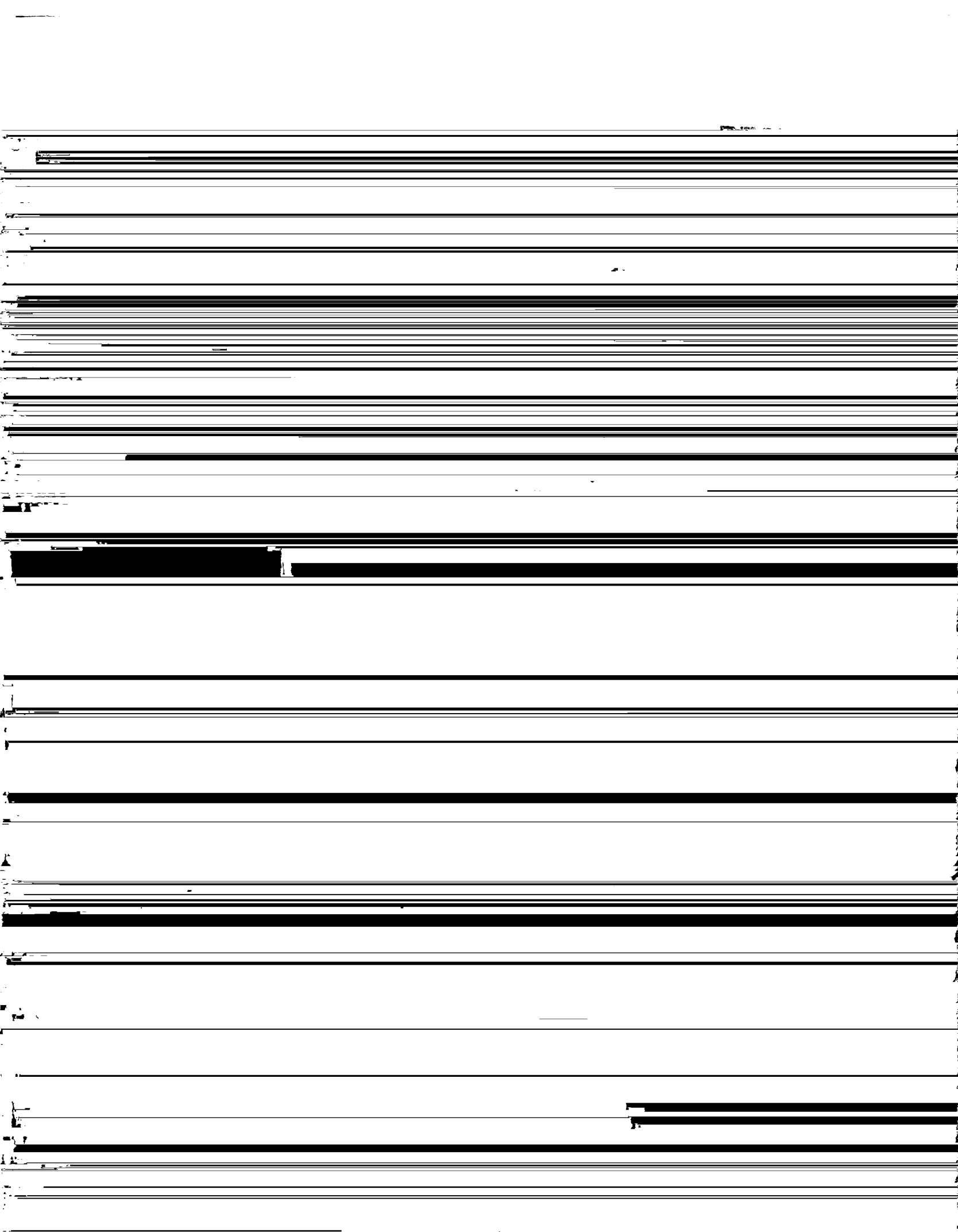
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SUMMARY

The American Radio Relay League, Incorporated (the League), submits its comments in response to the Notice of Proposed Rule Making (the Notice), 7 FCC Rcd. 2202 (58 Fed. Reg. 17375, released March 29, 1993). The Notice proposes certain rule changes to determine the proper obligation of amateur radio stations in message forwarding systems for message content. The Notice includes proposals for accountability of control operators of voice repeaters and data stations configured in networks of stations which relay messages under automatic control. The Notice thus proposes modification of the Commission's current policy, which provides for accountability of each licensee for each transmission emanating from the licensee's station, regardless of the configuration of the system of stations in a data network, or whether the station is in repeater operation.

The League suggests that with respect to repeater stations, the Commission properly looks primarily to the originator of the transmission for accountability, and relieves the repeater operator for content violations retransmitted inadvertently. The control operator of a repeater should, in the proper exercise of control, take steps to insure that the violations are not permitted to continue.

As to message forwarding systems, the Commission properly looks to the originator of the message primarily, but also, for enforcement reasons, to the "first forwarder" of the communications (the first station in the message forwarding system where a data message is assembled and is capable of screening for content



whether the station is in repeater operation. In response to the proposals contained in the Notice,¹ the League states as follows:

I. Introduction: Control Operator Accountability Policies

standing self-policing mechanism which prevails in the amateur bands":

The comments substantially supported proposals to allow automatic control methods as being timely and in general conformance with today's practical requirements for amateur repeater operations. There was concern, however, with certain of the requirements related to the responsibility of the station licensee and the control operator for monitoring transmissions by licensees who utilize the repeater facility. Here, a number of parties argued that recording and reviewing transmissions over an automatically controlled repeater station when they were not monitored by a control operator would involve expense and time which were not warranted since "user" violations could be controlled by the long-standing self-policing mechanism which prevails in the amateur bands. It was recommended, therefore, that this requirement be modified by eliminating or relaxing the recording and review procedure we had proposed, and by relying, instead, upon other amateurs to monitor the repeater operation and report violations to the control operator...

The Commission recognizes that it is often not feasible to follow-up effectively on transmissions that will have occurred hours earlier and that in these instances the amateur self-policing effort could be beneficial. In the Notice, we acknowledged that the success of an automatic repeater control program would depend to a great extent on the Amateurs' demonstrated ability to monitor and effectively control their group...

34 RR 2d at 135.

2. Thus, the Commission permitted operators of "closed" repeaters³ to operate under automatic control without a monitoring requirement, and for open repeaters to be operated either by real-time monitoring or by recording and reviewing transmissions for improper operation at a later time (within a "reasonable period"). There was no policy then that the licensee of the repeater would be

³ The closed repeater was defined as one which was used only by persons specifically authorized by the control operator with means provided to limit use of the repeaters.

held accountable for a content violation merely because the violative transmission was made through the repeater.

3. The Commission re-emphasized that policy in 1978, in Docket 21033, in a Memorandum Opinion and Order⁴ which addressed simplification of the Commission's rules governing licensing and operation of complex amateur systems, including repeaters. The Commission had eliminated separate licensing of repeater stations, and certain repeater licensees were concerned that, by operating their primary stations as repeaters, those primary station licenses would be jeopardized by rule violations committed by users of the repeater. Of this, the Commission stated as follows:

licensee of an amateur station in repeater operation would not be responsible for rule violations committed by users of the repeaters, though the communications are retransmitted by the repeater. The petition was dismissed by the Commission in 1981, and the petitioners requested reconsideration. In denying reconsideration, the Chief, Private Radio Bureau stated a new policy on accountability for message content violations. He noted that then Section 97.79(a) of the Rules provided that the licensee of an amateur station is responsible for its proper operation, and held that a "necessary corollary" to that rule is that "if one is responsible for something, it must be under one's control." The Chief cited Section 310(d) of the Communications Act of 1934⁵ for the proposition that a repeater licensee cannot be relieved of the obligation for content responsibility by "assignment" of that obligation to the originator of the message.⁶

5. The Chief read the Commission's statement in the above-quoted Memorandum Opinion and Order in Docket 21033 as providing that the repeater licensee, solely by virtue of a message passing

⁵ 47 U.S.C. §310(d). This section of the Act addresses assignment of licenses and transfers of control or other disposition of construction permits, licenses or the rights thereunder, and requires Commission approval therefor.

⁶ This, of course, begs the question. Whether the licensee of a repeater has any content responsibility under the circumstances is the issue, not whether the licensee can assign that responsibility. The assumption of the Chief, Private Radio Bureau at the time was that the accountability of the repeater licensee for violative message content is a "given". Based on past precedent, however, that assumption was unwarranted, and in fact in conflict with prior Commission statements of policy.

through the repeater, could be deemed to have failed in his or her obligation to provide adequate "control" of the repeater. The Chief concluded (without explanation) that control was not severable into technical control, content control of messages the repeater licensee originates, and content control of messages originated by repeater users:

On the contrary, the concept of control (insofar as it relates to radio licensee responsibility) is indivisible. In fact, that concept derives its meaning ex vi termini, i.e., from the force of the word itself that we use to pinpoint responsibility.

Order, PR-3543, RM-3618, released April 23, 1982.

The Chief also stated some guidelines for the repeater licensee in the same Order:

Violative users of a repeater can be identified by the repeater licensee or by repeater users. In the latter case, the violators should be reported to the repeater licensee. The repeater licensee, in turn, must take effective action to keep the violations from recurring. This action may involve shutting down the repeater temporarily. That may be necessary from time to time even though it means that the repeater becomes unavailable for normal or emergency use. We are not persuaded that repeater operation is sacrosanct and that it needs to be kept open at all costs when to do so is to allow the retransmission of violative communications. We recognize our view is not shared by all repeater owners/licensees. However, to hold otherwise, and to absolve a repeater licensee from responsibility for the content of messages retransmitted over his/her station in repeater operation, would be to abdicate the responsibility that Congress has given us. In this connection, we will let our repeater rules speak for themselves...

Id., at paragraph 6.

6. In 1986, in Docket 85-105, the Commission addressed the needs of the explosively developing packet radio network at VHF frequencies. In January of that year, the Commission adopted a

Report and Order authorizing amateur stations transmitting digital communications at VHF and above to operate under automatic control. That Report and Order required local control, however, for any amateur station transmitting third party traffic. The League took exception to that requirement as it related to packet radio, as compliance would require the presence of control operators at every intermediate relay point in a network, and the benefits of the network in speed and efficiency would be rendered a nullity. The Commission agreed, and permitted automatic control of AX.25 protocol packet communications while transmitting third party communications. Thus, intermediate stations did not have to be operated under local or remote control when transmitting packet communications on behalf of third parties.⁷ The rationale for this action was stated as follows:

When an amateur station is under local or remote control, the control operator at the control point directly supervises every transmission. Thus, all transmitted messages are screened. Such is not the case where the station is operated under automatic control. (footnote omitted). Only after-the-fact screening is possible since the control operator can only indirectly supervise the station transmissions...While screening of messages at the entry point serves to prevent the introduction of

misuse of the station so that prompt corrective action will be taken.

1 FCC Rcd. at 167.

Thus, with respect to intermediate stations in packet message forwarding systems, (as with repeater stations), the Commission understood that only after-the-fact screening of messages is possible since the control operator of a given station can only indirectly supervise the station transmissions. Once a control operator of an intermediate station in a message forwarding system is made aware of a problem, then corrective action can be taken to prevent a recurrence of the violation. The Commission in Docket 85-105 appeared to revert to the policy taken prior to 1982 with respect to voice repeaters: that the obligation of a station through which messages were retransmitted is to take steps, within a reasonable time after being alerted to a violative message passing through the station, to prevent a recurrence of the problem.

7. However, any reversion to that prior policy was short-lived. In 1990, in Docket No. 90-561, the Commission refused to propose a League request for amendment of Section 97.109 of the Amateur Service Rules to delete the prohibition of automatic control of third party VHF communications generally (rather than just for AX.25 packet stations). The League, in a Petition for Rule Making (RM-7243), had requested that the rules be amended to specify that the content of a message being retransmitted by an amateur station should be the sole responsibility of the originating station. In a Notice of Proposed Rule Making, 5 FCC

Rcd. 7658 (1990), the Commission declined to propose such a rule, stating that:

Amateur Service licensees are free to create and pioneer communications systems. Our regulatory approach, therefore, is to state the basic requirements that each amateur operator and each station must observe. Amateur stations are not common carrier communication systems, although technically some configurations of amateur stations may be similar. All rules apply individually to each amateur station in the system, not to the resulting system. Each station licensee and each station control operator is responsible for the messages transmitted as well as those retransmitted by the station (footnote omitted). Therefore, no change in the rule is proposed.⁸

5 FCC Rcd. at 7658-9.

It is impossible to square this holding with either the 1975/1978 repeater control policies of the Commission or the 1986 determination of accountability of intermediate stations in a packet radio network. Some clarification of the obligation of participants in message forwarding systems and with respect to voice repeaters was, and is now necessary. It is apparently now the current policy of the Commission that all amateur stations are equally responsible for transmissions made from or through their stations. It is the League's suggestion, based on the foregoing review, that there has been an uneven application of accountability policy over the years. This unevenness is due to the inapplicability of the current policy to amateur message relay and forwarding systems. It is time for the zero-based review of the policy contained in the Notice, because amateur technology has

⁸ The omitted footnote is to a reference to the 1982 Order of the Chief, Private Radio Bureau, discussed hereinabove.

rendered it outdated. The instant Notice proposal is indeed timely and forward-looking.

II. The Enforcement Issue

There are several matters not subject to significant debate

from repeaters) there are enforcement problems in a system which holds only the originator of a message accountable for message content.

9. Another "given" in determining the proper terminus for content liability in a forwarding system is that there is practical difficulty in identifying the station which initiated a particular data message through a message forwarding system. The burden of proof on the Commission in enforcement cases has in the past included a requirement that a violative transmission be specifically shown to have been made by a particular individual. James R. Weaks, 30 RR 2d 1651 (Rev. Bd. 1974). In that case, the Safety and Special Services Division, Private Radio Bureau, was unable to sustain its burden of proof where a violative message was monitored from a distance, and identification of the alleged violator was based solely on use of a call sign. There had been no direction finding or voice identification techniques used. The Review Board held that the Administrative Law Judge was left with no reliable basis for concluding that the accused licensee had in fact made the transmissions. Using this case as an example, it can be seen that there are difficulties in a regulatory scheme in which only the originator of a brief data message is held accountable for its content. Such a plan leaves little room for the traditional self-enforcement efforts of amateurs; and that is the real basis for the high overall degree of compliance with rules in the Service to date. This problem is not as difficult with respect to voice repeaters, where the precise origin of voice transmissions can be

more readily determined, and the originator of violative messages must be repetitive in his efforts in order for the transmissions to be a significant problem. Even with respect to misidentified or unidentified transmissions through a repeater, conventional direction finding techniques provide an adequate remedy.

10. The impact of violative messages is not constant. A fundamental measure of the potential harm from a violative communication is the number of recipients. When a station multiplies the number of recipients by intentionally delivering a message not only to an end user but also to other recipients

bulletin board, in a message forwarding system. The Notice proposals properly make the distinction.

III. The Commission's Revised Accountability Plan is Basically Sound

11. There is some justification for an accountability standard for stations in message forwarding systems which includes licensees beyond the originator of the message. Identification of the originator using traditional direction-finding techniques is not often possible. The practicalities thereof, however, must be consistent with encouraging development of such systems, and with fundamental fairness based on actual ability to prevent misuse of the system. There must be, consistent with allocation of accountability, an actual ability on the part of a particular control operator to fulfill the obligations placed upon him or her. Overall, instances of abuses of message forwarding systems are very few indeed, and control operators of both repeaters and message forwarding systems have been robustly responsive after being made aware of abuses. Thus, the League supports the Commission's proposal to relieve repeater operators from accountability for violative communications that the repeater retransmits inadvertently.¹⁰ It is also supportive of the Commission's proposal to hold the originator of the message and the control operator of the station that first forwards communications from the originating station on behalf of the system accountable for violative

¹⁰ Proposed Section 97.205(g) states that "(t)he control operator of a repeater is not accountable for violative communications that the repeater retransmits inadvertently."

communications. The proposed rules acknowledge that which has been noted by the Commission in the past: that there is no practical way for certain control operators in message forwarding systems to meet the strict obligations of the current Commission policy. In each case, the basic responsibility rightly belongs to the amateur licensee who originates the communication.

12. The nature of the accountability of the first forwarding station in a message forwarding system requires some elaboration. The Notice states, with respect to this, as follows:

We are not convinced that only holding the originating station licensee responsible would be sufficient to prevent misuse of message forwarding systems. It appears that the control operator of the station that first forwards communications from the originating station on behalf of the system is also in a good position to determine if those communications violate the rules and take corrective action where necessary.

Notice, at paragraph 5.

Inasmuch as the obligation of the "first forwarding" station has traditionally been to exercise control over the system, he or she should have some flexibility in the means by which he or she does so. Specifically, the League suggests that the first-forwarder's principal responsibility should be to establish with reasonable certainty the identity of the amateur station originating a particular message. Screening the message content should be an alternative available to first-forwarders who cannot, or who do not want to, implement authentication or similar systems to verify the identity of stations accessing the network through them. In other

for message content¹¹. He or she should be responsible for message content only if the originator could not be identified. Holding the first-forwarder absolutely accountable for message content is destructive to real-time relay, and at least debilitating to store-and-forward networks. It is in any event unnecessary if the originator can be identified.

IV. Definitions

13. There is in the Notice proposal an assumption that the "first-forwarder" in a message forwarding system will always be the station that receives directly from the originating station and inputs it into the "system".¹² However, the true "first-forwarder" may not be a store-and-forward bulletin board-type station. It might instead be (as an example) a digipeater, which is located between the originating station and the target bulletin board system, which would be the first practical opportunity for message screening by the control operator of the store and forward system. Thus, the identification of the "first forwarder" in the proposed Section 97.217(b) of the Rules requires some clarification. As noted above, holding the true first-forwarder absolutely accountable for message content is impractical when virtual-circuit protocols are used. The "first forwarder" who should have the obligation in such a case is the control operator of the first

¹¹ The control operator should, however, be responsible for promptly removing and discontinuing from a store and forward system messages which are determined to be violative of the Commission's content regulations. See Footnote 12 of the Notice.

¹² See the Notice, at footnote 11, page 2.

"upstream" store and forward system in the message forwarding network.

14. In addition, the definition of "repeater" in the proposed Section 97.3(a)(36) is technically confining. A repeater should not be limited to angle-modulated phone and image emissions. Such would not include all present typical repeater operations¹³. Neither would it provide for operation of, for example, ACSSB repeaters, linear translators, or the retransmission of data signals through repeaters normally used for voice repeaters. A defining characteristic of repeaters is that they use two frequencies to communicate, and in doing so, they use one frequency to transmit and the other to receive. Furthermore, a repeater does not retransmit the signals instantaneously, as there is always a propagation delay, albeit small, through a repeater. A repeater receives and retransmits simultaneously, however, and that concept is a more accurate means of defining the function of the repeater. The word "simultaneously" in this case means that the repeater is receiving and transmitting concurrently, whereas each wave form might be slightly displaced in time between receive and transmit. Therefore, the League suggests that the following definition be substituted for that in the Notice:

(36) **Repeater.** An amateur station, other than an auxiliary station, which receives the signals of other amateur stations on one frequency and simultaneously retransmits them on another frequency.

¹³ This is because, for example, amateur television repeaters utilize vestigial sideband AM type transmissions.

This definition more appropriately sets forth the distinction between repeaters and automatic message forwarding systems, and is no more inclusive than it need be.

V. Conclusion

15. The League supports the Commission's proposal to more specifically define the proper limits of accountability for both repeaters and message forwarding systems. This proceeding is timely, and is aimed at facilitating the development of rapid data networks and other systems in the Amateur Radio Service. The proposed rules, if modified slightly as suggested herein, will remedy the lack of clarity in the degree of accountability of amateur stations in repeater operation and those participating in message forwarding systems. The League believes that the Commission has arrived at the proper policy limitation on liability of individual amateur stations for inadvertent retransmission of messages which may violate Commission content regulations. It has placed the repeater owners, and the participants in a message forwarding system in the proper positions relative to the prevention and elimination of improper messages, according to their actual ability to prevent or eliminate¹⁴ an offending message. The

¹⁴ The League believes it reasonable for the Commission to require, as it does in Footnote 12 of the Notice, that control operators of forwarding stations other than first-forwarders should be responsible for discontinuing communications that violate the rules once they become aware of their presence. To this, the League would add only that this obligation should be applied to those transmissions which a reasonable person would conclude, in the exercise of good judgment to be in violation of a Commission Rule or a provision of the Communications Act.

Commission should clarify the nature of the obligation of the first-forwarder in a message forwarding system, so as to permit either an authentication arrangement with respect to the originator of the message, or a message screening provision. Either should be deemed sufficient to discharge the control operator's obligation to exercise control as a "first-forwarder." Also, the definition of "repeater" and the identification of the "first-forwarder" bear some modification as well.

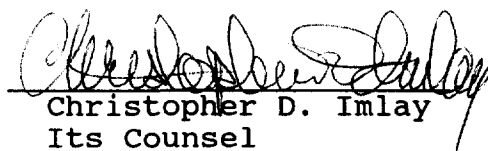
Therefore, the foregoing considered, the American Radio Relay League, Incorporated respectfully requests that the Commission adopt the Notice proposals without delay, but with the minor modifications suggested in these comments.

Respectfully submitted,

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